IN THE SUPREME COURT OF MISSOURI

SC86952

STATE OF MISSOURI, ex rel. ST. LOUIS POST-DISPATCH, LLC

Relator,

vs.

THE HONORABLE JOHN F. GARVEY,

Respondent.

On a Petition for Writ of Prohibition
or, in the Alternative, for Mandamus

SUBSTITUTE REPLY BRIEF OF RELATOR ST. LOUIS POST-DISPATCH, LLC

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ARGUMENT

Respondent misconstrues the Post-Dispatch's position before this Court. The Post-Dispatch's argument is not premised merely on "good public policy" or legislative history. Nor is the Post-Dispatch asking this Court to judicially amend MO. REV. STAT. §211.171.6. In fact, these proceedings result because Respondent disregarded the plain language of the statute -- effectively judicially amending it -- based on his belief that the legislature overlooked "circumstances wherein a person is both a victim and a mother of the Defendant" and his perception of "common decency and mercy" and "the best interests of the child." (Order Granting Juvenile's Motion to Close Juvenile Proceedings, ¶11, Appendix at A3).

The Post-Dispatch's argument is based on the plain language of MO. REV. STAT. §211.171.6, which states that the public shall be excluded "except in cases where the child is accused of conduct which, if committed by an adult, would be considered a class A or B felony…." Nothing in the statute limits the openness of such proceedings depending upon whether "a person is both a victim and a mother of the Defendant," as identified originally by Respondent as the grounds for excluding the public. Similarly, nothing in the statute limits the openness of the proceedings to the "adjudicatory proceedings" as held by the appellate court.

Abandoning his original ruling and disregarding the holding of the appellate court, Respondent now argues for a *new* interpretation of the statute. In his Substitute Brief, Respondent "suggest[s] that the 'hearing' referenced in §211.171.6 RSMO. is the hearing

… at which it is determined if the child is to be certified as an adult." (Respondent's Substitute Brief at 19). As with the previous restrictions sought to be imposed on the statute, there is no support in the language of the statute for this restriction either. Section 211.171.6 does not even use the word "hearing," and there is no basis in the plain reading of the statute to infer that its requirements pertain to anything less than the entirety of the proceedings involving a juvenile charged with offenses constituting class A or B felonies if committed by an adult.

Section 211.171.6 contains none of the various limitations, which Respondent and the appellate court have sought to impose. The statute is a wide-open elimination of previous statutory preclusions on the openness of the proceedings, and a statement that serious juvenile offenses ought to be treated with the same degree of transparency as criminal proceedings involving adults. That is the plain and ordinary interpretation of the words of the statute.

Moreover, that interpretation is bolstered by the public policy factors and the historical details identified in the Post-Dispatch's Substitute Brief. Respondent is correct that legislative history usually cannot be used to support an interpretation in derogation of the plain language of a statute. But, that is not the case here. The legislative history is consistent with the language of the statute and the interpretation urged by the Post-Dispatch.

Assuming for the purposes of argument that section 211.171.6 was unclear, then "the court may review the earlier versions of the law, or examine the whole act to discern its evident purpose, or consider the problem the statute was designed to remedy." *See In*

re M.D.R., 124 S.W.3d 469, 472 (Mo. banc 2004); *see also State ex rel. Nixon v. Quik Trip Corp.*, 133 S.W.3d 33, 377 (Mo. banc 2004). "Insight into the legislature's object can be gained by identifying the problems sought to be remedied and the circumstances and conditions existing at the time of the enactment." *Bachtel v. Miller County Nursing Home Dist.*, 110 S.W.3d 799, 801 (Mo. banc 2003).

Consideration of the history surrounding section 211.171.6 and the problems it was designed to remedy shows that the legislature intended to open to public scrutiny all proceedings involving juveniles charged with serious felonies. This is especially clear after reviewing the legislative summary of the legislation.

Respondent attempts to dispense with these clear statements of legislative intent by arguing that they related to earlier versions of the statute that are no longer in effect as a consequence of repeal and re-enactment in 1998 and 2004. (Respondent's Substitute Brief at 24). However, while the legislature changed *other* parts of the juvenile code in 1998 and 2004, it enacted the open proceedings provisions in 1995, and it has not changed those provisions since. *See* LAWS OF MISSOURI 1995, Eighty-Eighth General Assembly, First Regular Session, p. 554 (compiled by Rebecca McDowell Cook, Secretary of State).

The 1998 legislation added subparagraph 3 to §211.171 (providing foster parents with the right to notice and to be heard in any hearing). As a consequence of the addition of this new subparagraph, the legislature moved the language mandating open proceedings in cases of serious felonies or repeat offenders *verbatim* from subparagraph 5 to subparagraph 6, where it is found today. *See* SESSION LAWS OF MISSOURI 1998,

Eighty-Ninth General Assembly, Second Regular Session, p. 1168 (compiled by the Committee on Legislative Research).

The 2004 legislation added the following language to subparagraph 7:

> except that, the court shall not grant a continuance in such proceedings absent compelling extenuating circumstances, and in such cases, the court shall make written findings on the record detailing the specific reasons for granting a continuance.

The 2004 legislation did not change subparagraph 6 requiring open proceedings for serious felonies and repeat offenders. *See* House Bill 1453, *available at* www.house.state.mo.us/bills041/biltxt/truly/HB1453T.HTM.

Accordingly, the 1995 Bill Summaries discussed in the Post-Disptach's Substitute Brief do in fact reflect the legislature's intent that MO. REV. STAT. §211.171.6 "[m]akes public the record of the proceedings in juvenile court if the child has been accused on an offense which, if committed by an adult, would be a class A or B felony; or class C felony, if the child has a prior adjudication of 2 or more unrelated acts which would be classified as A, B or C. felonies…." Contrary to Respondent's arguments, these Bill Summaries are very precise and quite helpful in clarifying the confusion engendered by the divergent positions of the Respondent and the appellate court.

The plain language of MO. REV. STAT. §211.171.6, the legislative intent and history behind it, and sound public policy all support the Post-Dispatch's position that the lower courts have erred in excluding the Post-Dispatch from the proceedings involving L.K.

CONCLUSION

This Court should hold that Mo. Rev. Stat. § 211.171.6 requires openness of all juvenile proceedings involving class A and B felonies, and not just the adjudicatory hearing, and it should enter its order prohibiting Respondent from closing the proceedings herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing brief in paper form and one in electronic form have been mailed, United States postage prepaid, and sent via facsimile, on this 5th day of October 2005, to:

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CERTIFICATE OF COMPLIANCE PURSUANT TO 84.06(c)

I hereby certify that this brief complies with Supreme Court Rules 55.03 and 84.06(b) and is proportionately spaced, using Times New Roman, 13 point type, and contains 1,208 words, excluding the cover, certificate of service, the certificate of compliance required by Rule 84.06(c), signature block, and appendix.

I also certify that the computer diskettes that I am providing have been scanned for viruses and have been found to be virus-free.

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